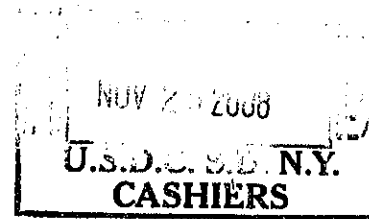


UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK



----- x
MICHAEL ADAMOWICZ and
ELIZABETH FRASER,
as Executors of the Estate of Mary
Adamowicz, Deceased,

Plaintiffs,

v.

INTERNAL REVENUE SERVICE,

Defendant.
----- x

CIVIL ACTION
08 CV 10255

FILE NUMBER _____

ASSIGNED
JUDGE: _____

ECF CASE

COMPLAINT

Plaintiffs, by their attorneys, The Law Office of Frederick M. Sembler, PLLC, allege as follows:

1. Plaintiff Michael Adamowicz (a/k/a Michael Adamowicz III) ("Plaintiff Adamowicz") resides in Old Westbury, Nassau County, New York.
2. Plaintiff Elizabeth Fraser ("Plaintiff Fraser") resides in Redding, Fairfield County, Connecticut.
3. Plaintiffs are the Executors of the Estate ("Estate") of their mother, Mary Adamowicz, deceased ("Decedent").
4. This proceeding is brought pursuant to 5 U.S.C. § 552(a)(4)(B) to obtain the production of records improperly withheld by the Internal Revenue Service ("Defendant") in response to the requests by Plaintiffs under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* ("FOIA"), as hereinafter more fully appears.
5. Jurisdiction of this Court is based upon 28 U.S.C. § 1331 and IRC § 552(a)(4)(B).

6. Venue in this Court is proper pursuant to IRC § 552(a)(4)(B), as, upon information and belief, most or all of the records in question are located within this District.

7. Decedent died on March 2, 2002.

8. On or about May 29, 2003, Plaintiffs, as Executors of Decedent's Estate, filed with Defendant a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return ("Estate's Form 706") for the Estate.

9. In or about January 2004, Plaintiffs were notified that the Estate's Form 706 had been selected for examination by Defendant.

10. Said examination has been conducted by personnel in Defendant's Office in New York, New York.

Plaintiffs' December 6, 2005 FOIA Request.

11. By letter dated December 6, 2005 filed with Defendant's Manhattan Disclosure Office ("Plaintiffs' December 6, 2005 FOIA Request"), Plaintiffs' counsel on behalf of Plaintiffs sought the following records from Defendant:

All records pertaining to the Protest to the Appeals Office filed by the Executors of the Estate of Mary Adamowicz in August 2004.

12. On or about March 27, 2006, Defendant provided forty (40) pages of records to Plaintiffs' counsel in response to Plaintiffs' December 6, 2005 FOIA Request.

13. With said production, Defendant included a letter dated March 27, 2006, signed by Alan Dichter, Disclosure Specialist ("Defendant's March 27, 2006 Letter").

14. Defendant's March 27, 2006 Letter, after referring to Plaintiffs' December 6, 2005 FOIA Request, stated in pertinent part that "[e]nclosed is a copy of the information requested consisting of 40 pages."

15. Defendant's March 27, 2006 Letter did not otherwise indicate whether Defendant withheld any records responsive to Plaintiffs' December 6, 2005 FOIA Request, in whole or in part.

16. The documents produced with Defendant's March 27, 2006 Letter, however, appeared to refer to other records that were not included in said production and that are responsive to Plaintiffs' December 6, 2005 FOIA Request.

17. Further, some of the documents included with Defendant's March 27, 2006 Letter appeared to contain redactions.

18. Further, Plaintiffs in fact are in possession of documents pertaining to the Protest to the Appeals Office that is referred to in Plaintiffs' December 6, 2005 FOIA Request and that were prepared by the Service, but that were not included among the records produced with Defendant's March 27, 2006 Letter.

19. By letter dated April 28, 2006 to Defendant's Appeals Office, Plaintiffs appealed Defendant's decisions with respect to Defendant's response to Plaintiffs' December 6, 2005 FOIA Request, and requested that Defendant be directed to produce unredacted versions of any documents produced by Defendant in response to the Plaintiffs' December 6, 2005 FOIA Request that were redacted, and other records responsive to Plaintiffs' December 6, 2005 FOIA Request that were not produced with or referenced in the Defendant's March 27, 2006 letter.

20. By letter dated September 11, 2006, Defendant's Appeals Office informed Plaintiffs that Defendant's response as set forth in Defendant's March 27, 2006 letter and production was being upheld by the Appeals Office, and also claimed that the 40 pages of documents produced by Defendant had been "provided . . . in their entirety."

Plaintiffs' December 16, 2005 FOIA Request.

21. By letter dated December 16, 2005 filed with Defendant's Manhattan Disclosure Office ("Plaintiffs' December 16, 2005 FOIA Request"), Plaintiffs' counsel on behalf of Plaintiffs sought the following records from Defendant:

All records created or modified, whether by or on behalf of the Internal Revenue Service or by any other person or entity, or received by the Internal Revenue Service, in the period from March 10, 2005 to the present and pertaining to the examination of the Form 706 filed in 2003 for the above-referenced Estate, excluding (i) copies of the Form 706 itself, but only to the extent such copies are identical to the Form 706 as filed, and (ii) copies of correspondence and documents submitted by me to the Internal Revenue Service in connection with the examination of the Estate's Form 706, but only to the extent such copies are identical to the correspondence and documents as submitted to the Service.

22. On or about March 27, 2006, Defendant provided approximately 567 pages of records to Plaintiffs' counsel in response to Plaintiffs' December 16, 2005 FOIA Request.

23. With said production, Defendant included a letter dated March 27, 2006 signed by Alan Dichter, Disclosure Specialist ("Defendant's March 27, 2006 Letter").

24. Defendant's March 27, 2006 Letter stated in pertinent part that Defendant "withheld 810 pages in their entirety and 3 pages in part."

25. Defendant's March 27, 2006 Letter claimed that said records were being withheld in accordance with subsections (b)(3), (b)(5) and (b)(7)(A) of Section 552 of the FOIA.

26. Upon information and belief, none of the withheld records falls within any of the exemptions to the FOIA cited in Defendant's March 27, 2006 Letter.

27. By letter dated April 28, 2006 to Defendant's Appeals Office, Plaintiffs appealed Defendant's decision to withhold the materials described in Defendant's March 27, 2006 Letter,

as well as any other records responsive to Plaintiffs' December 16, 2005 FOIA Request that may exist.

28. By letter dated September 11, 2006, Defendant's Appeals Office informed Plaintiffs that Defendant's decisions as set forth in Defendant's March 27, 2006 Letter were being upheld by the Appeals Office.

Plaintiffs' April 3, 2007 FOIA Request.

29. By letter dated April 3, 2007 filed with Defendant's Manhattan Disclosure Office ("Plaintiffs' April 3, 2007 FOIA Request"), Plaintiffs' counsel on behalf of Plaintiffs sought the following records from Defendant:

All records created or modified, whether by or on behalf of the Internal Revenue Service or by any other person or entity, or received by the Internal Revenue Service, in the period from December 16, 2005 to the present and pertaining to the examination of the Form 706 filed in 2003 for the above-referenced Estate, excluding (i) copies of the Form 706 itself, but only to the extent such copies are identical to the Form 706 as filed, and (ii) copies of correspondence and documents submitted by me or by the Executors to the Internal Revenue Service in connection with the examination of the Estate's Form 706, but only to the extent such copies are identical to the correspondence and documents as submitted to the Service.

30. On or about February 6, 2008, Defendant provided approximately 2,031 pages of records to Plaintiffs' counsel in response to Plaintiffs' April 3, 2007 FOIA Request.

31. In this said production, Defendant included a letter dated February 6, 2008 signed by C.J. Mills, Disclosure Manager ("Defendant's February 6, 2008 Letter").

32. Defendant's February 6, 2008 Letter stated in pertinent part that Defendant was "withholding 413 pages in their entirety and 12 pages in part."

33. Defendant's February 6, 2008 Letter claimed that said records were being withheld in accordance with subsections 5(b)(3), (b)(5) and (b)(7)(D) of section 552 of the FOIA.

34. Upon information and belief, none of the withheld records falls within any of the exemptions to the FOIA cited in Defendant's February 6, 2008 Letter.

35. By letter dated March 10, 2008 to Defendant's Appeals Office, Plaintiffs appealed Defendant's decision to withhold the materials described in Defendant's February 6, 2008 letter, as well as any other records responsive to Plaintiffs' April 3, 2007 FOIA Request that may exist.

36. By letter dated June 24, 2008, Defendant's Appeals Office informed Plaintiff that Defendant's decisions as set forth in Defendant's February 6, 2008 Letter were being upheld by the Appeals Office.

Exhaustion of Administrative Remedies.

37. Based upon the foregoing, Plaintiffs have exhausted their administrative remedies with Defendant with respect to Plaintiffs' December 6, 2005 FOIA Request, Plaintiffs' December 16, 2005 FOIA Request, and Plaintiffs' April 3, 2007 FOIA Request, prior to bringing the instant action.

WHEREFORE, Plaintiffs demand judgment enjoining Defendant from withholding the records sought in Plaintiffs' December 6, 2005 FOIA Request, Plaintiffs' December 16, 2005 FOIA Request, and Plaintiffs' April 3, 2007 FOIA Request; ordering Defendant to produce all records withheld from Plaintiffs that are responsive to the aforementioned requests; awarding

Plaintiffs their reasonable attorney's fees and expenses; and granting Plaintiffs such other and further relief as the Court may deem just and proper.

Dated: November 21, 2008



Frederick M. Sembler FS6913

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

Docket Number:

Year:

**MICHAEL ADAMOWICZ and
ELIZABETH FRASER,
as Executors of the Estate of Mary
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Plaintiffs,

-v-

INTERNAL REVENUE SERVICE,

Defendant.

COMPLAINT

THE LAW OFFICE OF FREDERICK M. SEMBLER, PLLC

**501 MADISON AVENUE
8TH FLOOR
NEW YORK, NY 10022
TEL. NO. (212) 750-4483**

Attorneys for Plaintiffs

Service of a copy of the within is hereby admitted.

Signature

Dated:

Frederick M. Sembler

Attorney(s) for